**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Writ Petition No. 805 (M/S) of 2004

Radhey Shyam ……... Petitioner

Versus

Presiding Judge, Family Court
Haridwar, District Haridwar and
Another …… Respondents.

……

Sri Parikshit Saini, learned counsel for the petitioner.
Standing Counsel for the State.

**Hon.Rajesh Tandon J.**

1. The petitioner has prayed for a writ of certiorari for quashing the proceedings in O.S.No. 426 of 2002 pending before the Respondent no.1.

2. Briefly stated the facts are that the matrimonial suit for dissolution of marriage by mutual consent under section 13-B of the Hindu Marriage Act was filed being O.S. No. 411 of 2002 on 4.10.2002. On 7.6.2004, the said suit was dismissed and an application for recall of the orders is also pending at present.

3. However, another suit no. 426 of 2002 was filed by the respondent no.2 and the same is pending before the Judge, Family Court, Haridwar u/s 13 of the Hindu Marriage Act.

4. Learned counsel for the petitioner has prayed that the cause of action in both the suits being common, and, therefore, the suit no. 426 of 2002 is liable to be stayed.

5. As will appear that both the suits viz. earlier suit under section 13-B of the Hindu Marriage Act and the present suit being 426 of 2002 filed by the respondent no.2 under section 13 of the Hindu Marriage Act involve common points. There is no occasion to stay the proceedings of suit no. 426 of 2002 under section 13 of the Hindu Marriage Act. Suit no. 411 and 426 both relate to different cause of action. However, in the event suit no. 411 of 2002, which has been dismissed in default a restoration application, which has also been dismissed, comes in existence,

liberty is given to the petitioner to apply before the Family Court for consolidating both the suits under section 4 A of the Code of Civil Procedure.

6. Subject to the aforesaid, the writ petition is disposed of.

**( Rajesh Tandon, J.)**
**2.9.2004**